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Attorneys for Plaintiff
HERBALIFE INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

HERBALIFE INTERNATIONAL, INC.,

Plaintiff,

v.

UNITHER PHARMA, INC., THE BOARD
OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY, and
NEW YORK MEDICAL COLLEGE.

Defendants.

Case No. C03-05878 JW

(Related Cases: C02-05284 JW;
C03-00415 JW; C03-05090 JW)

**HERBALIFE'S FIRST AMENDED
COMPLAINT**

Honorable James Ware

1 Plaintiff Herbalife International, Inc., by its attorneys, for its First Amended Complaint in
2 this action alleges:

3 PARTIES AND JURISDICTION

4 1. Plaintiff Herbalife International, Inc. ("Herbalife") is a Nevada corporation with its
5 principal place of business at 1800 Century Park East, Los Angeles, California.

6 2. On information and belief, defendant Unither Pharma, Inc. ("Unither") is a
7 Delaware corporation with its principal place of business at 1110 Spring Street, Silver Spring,
8 Maryland.

9 3. On information and belief, defendant the Board of Trustees of the Leland Stanford
10 Junior University ("Stanford") is a body having corporate powers under the laws of the state of
11 California, with a location in Stanford, California.

12 4. On information and belief, defendant New York Medical College ("NYMC") is a
13 body having corporate powers under the laws of the state of New York, with a location in
14 Valhalla, New York.

15 5. This action arises under the Patent Act of 1952, 35 U.S.C. §§ 101 et seq. and the
16 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

17 6. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331
18 and 1338(a).

19 CLAIM FOR RELIEF

20 (Declaratory Relief Against All Defendants)

21 7. Herbalife manufactures and sells a dietary supplement comprising L-arginine, in
22 combination with L-citrulline and other ingredients, under the trademark NITWORKS.

23 8. On or about July 25, 2003, defendant Unither sent Herbalife a certified letter dated
24 July 25, 2003 (the "July 25 Letter"), enclosing copies of U.S. Patent No. 5,217,997 issued June 8,
25 1993 (the "'997 Patent"), U.S. Patent No. 5,428,070, issued on June 27, 1995 (the "'070 Patent"),
26 U.S. Patent No. 5,891,459, issued on April 6, 1999 (the "'459 Patent"), and U.S. Patent No.
27 6,117,872, issued on September 12, 2000 (the "'872 Patent").
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1 9. On information and belief, NYMC is the assignee of the '997 Patent.

2 10. On information and belief, Stanford is the assignee of the '070, '459, and '872
3 Patents.

4 11. On information and belief, Unither is the exclusive licensee of the '997, '070, '459
5 and '872 Patents.

6 12. In the July 25 Letter to Herbalife, Unither asserted that "Herbalife should be
7 interested in Unither Pharma's standard Patent License if it intends to continue selling and
8 promoting its L-arginine-based products".

9 13. In its July 25 Letter to Herbalife, Unither further asserted that it had previously
10 sued Real Health Laboratories, Inc. for infringement of the '997, '070, '459 and '872 Patents.

11 14. In its July 25 Letter to Herbalife, Unither proposed licensing terms that strongly
12 implied an intent on Unither's part to sue Herbalife for infringement in similar fashion. In the
13 field of dietary supplement manufacture and distribution, no rational person in the position of
14 Unither could propose license terms resembling those proposed in Unither's July 25 Letter to
15 Herbalife and not have intention to sue for patent infringement if those terms were rejected.

16 15. As a result of the July 25 Letter and Unither's past litigation activities against third
17 parties, Herbalife has a reasonable apprehension of suit for infringement of the '997, '070, '459
18 and '872 Patents by Unither.

19 16. Herbalife is entitled to judgment declaring that it has not infringed any valid or
20 enforceable claim of the '997, '070, '459 and '872 Patents.

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WHEREFORE Herbalife prays that the Court:

A. Declare, adjudge and decree that Herbalife does not infringe and has not infringed any valid or enforceable claim of the '997 Patent, the '070 Patent, the '459 Patent, or the '872 Patent and is not liable to defendants for infringement of the '997 Patent, the '070 Patent, the '459 Patent or the '872 Patent; and

B. Grant such other and further relief as the court may deem just and proper.

Dated: July 14, 2004

BERGESON, LLP

By: S/S
Hway-ling Hsu

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